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IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT  
DIVISION 26

FILED  
APP DOCKET NO.

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ANGELA BOGUE-GILMORE, )  
Ms. Bogue-Gilmore, )

vs. )

Case No. 12 CV 2646

BEHAVIORAL SCIENCES )  
REGULATORY BOARD, )  
Respondent. )

CLERK OF DIST COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS  
BY

COPY

JOURNAL ENTRY

NOW on this 27<sup>th</sup> day of November, 2012, the above captioned matter comes before the Court for hearing on Ms. Bogue-Gilmore's Petition for Judicial Review. Ms. Bogue-Gilmore appears in person *pro se*. The Behavioral Sciences Regulatory Board appears through counsel Marty M. Snyder, Assistant Attorney General. There are no other appearances.

WHEREUPON the Court, after hearing the statements and arguments of the parties and upon review of the briefs submitted by the parties and review of the court file, makes the following findings of fact and conclusions of law:

**Background facts**

1. Ms. Bogue-Gilmore was a licensed clinical marital and family therapist.
2. On May 16, 2010, a former client of the Ms. Bogue-Gilmore, S.B., filed a complaint with the Behavioral Sciences Regulatory Board (hereafter the "Agency"). In his complaint, S.B. alleged that he was a client of the Ms. Bogue-Gilmore in the fall of 2007 and winter of 2008. S.B. alleged that Ms. Bogue-Gilmore told him that her family was having financial issues and that she needed money to refinance her house. S.B.

alleged that in March of 2008 he gave the Ms. Bogue-Gilmore and her husband \$6,000 in cash with the understanding that he would be repaid when Ms. Bogue-Gilmore refinanced her home loan. S.B. alleged that a few months later, Ms. Bogue-Gilmore told him that she needed more money. S.B. alleged that in August of 2008 he loaned Ms. Bogue-Gilmore another \$1,000 by check. S.B. alleged that these funds were never repaid by the Ms. Bogue-Gilmore.

3. After investigation of the complaint, the Agency's Complaint Review Committee found probable cause that Ms. Bogue-Gilmore had violated K.A.R. 102-5-12(a)(26), (27), and (44). The Committee issued a Summary Proceeding Order of Revocation, revoking Ms. Bogue-Gilmore's license.

4. Ms. Bogue-Gilmore submitted a request for hearing on July 18, 2011.

5. The Agency record contains a Petition in Discipline. The Petition is not signed, and there is no indication on the Petition when it was filed or when it was served on Ms. Bogue-Gilmore.

6. On November 7, 2011, a prehearing conference was conducted by telephone. At the time of the prehearing conference, Ms. Bogue-Gilmore was represented by Robert Eye. The prehearing conference resulted in a Prehearing Order, which was mailed to the parties on November 8, 2011. According to the Prehearing Order – "The issue on appeal will be whether [Ms. Bogue-Gilmore] is subject to discipline." The Prehearing Order also gave Ms. Bogue-Gilmore until December 1, 2011 to answer the Agency's Petition. In regards to discovery, the Prehearing Order stated that Ms. Bogue-Gilmore wanted to take a deposition and submit requests for admission. The Prehearing Order gave Ms. Bogue-Gilmore until December 31, 2011 to complete her

requested discovery. Finally, the Prehearing Order stated that Ms. Bogue-Gilmore contemplated filing a dispositive motion, and the order required that any such motion be filed by February 1, 2012.

7. No dispositive motions were filed, and the matter proceeded to hearing before Hearing Officer Edward Gaschler on April 11, 2012.

8. On April 27, 2012 Hearing Officer Gaschler submitted his Initial Order. In his order, Hearing Officer Gaschler found:

(a) That Ms. Bogue-Gilmore allowed her personal problems, including her financial distress, to interfere with or negatively impact her professional judgment, which constituted an act of unprofessional conduct in violation of K.A.R. 102-5-12(b)(8);

(b) That Ms. Bogue-Gilmore obtained a loan from S.B., and then falsely claimed that the loan was payment for a bill, which constituted an act of unprofessional conduct in violation of K.A.R. 102-5-12(b)(23);

(c) That Ms. Bogue-Gilmore exerted undue influence over S.B. in order to obtain loans of \$7,000, and that this was done within 24 months after S.B. ceased being her cline, which constitutes unprofessional conduct in violation of K.A.R. 102-5-12(b)(26);

(d) That by involving S.B. in her financial and other difficulties, Ms. Bogue-Gilmore exercised undue influence over S.B. in a manner that exploited S.B. for her financial gain, in violation of K.A.R. 120-5-12(b)(27); and

(e) That by discussing her financial distress and other problems with S.B. while S.B. was her client, Ms. Bogue-Gilmore created a dual relationship with S.B. in violation of K.A.R. 102-5-12(b)(44).

9. In reaching his findings set forth in paragraph 8 above, Hearing Officer Gaschler expressly found Ms. Bogue-Gilmore's position that the \$7,000 received from S.B. was payment for services was "not credible, logical, or plausible." The reasons given by Hearing Officer Gaschler to discount Ms. Bogue-Gilmore's testimony at the hearing were as follows:

(a) Evidence was presented that indicated that S.B.'s ex-spouse paid Ms. Bogue-Gilmore in full for her services;

(b) When Ms. Bogue-Gilmore declared bankruptcy, she listed S.B. as a creditor and characterized the \$7,000 transaction as a loan, which she discharged in the bankruptcy;

(c) The memo portion of the check that S.B. wrote to Ms. Bogue-Gilmore in August of 2008 contained the notation that the money was a "loan"; and

(d) Ms. Bogue-Gilmore had made some payments back to S.B. which was indicative of a loan, and that her explanation as to why she agreed to start paying back S.B. "has no merit."

10. Hearing Officer Gaschler further found in his Initial Order that S.B. was a credible witness:

"The Presiding Officer had the opportunity to observe S.B. S.B. did not appear to be the type of individual that would on one day hand [Ms. Bogue-Gilmore] \$6,000.00 and then the next day claim that the \$6,000.00 was a 'loan.' Further, in reviewing [Ms. Bogue-Gilmore's]

reply to the complaint as filed with the Board, [Ms. Bogue-Gilmore] writes, '[w]e did offer S.B. some of the property to which he refers in his complaint to fully pay back what had been unilaterally converted by him into a loan.' It is entirely illogical and unreasonable for [Ms. Bogue-Gilmore] to allege that the \$7,000.00 was payment on an account that [Ms. Bogue-Gilmore] must repay to S.B."

11. Hearing Officer Gaschler revoked Ms. Bogue-Gilmore's license.

12. On May 14, 2012, Ms. Bogue-Gilmore timely filed a Petition for Review with the Agency. Ms. Bogue-Gilmore simply requested "a review of the Initial Order." She did not state in her Petition for Review why she felt the Hearing Officer's Initial Order was in error.

13. On June 1, 2012, the Agency issued a Final Order Denying Review. In the Final Order, the Agency noted that Ms. Bogue-Gilmore:

"did not allege new facts that would change the outcome of the Initial Order, challenge any factual findings in the Initial Order, or contend the decision in the Initial Order was based upon facts not supported by the record. Nor did [Ms. Bogue-Gilmore] claim the hearing officer erroneously interpreted or applied the law. In short, [Ms. Bogue-Gilmore] seeks a different outcome on the same facts heard by the Presiding Officer."

The Agency found no factual or legal basis existed that would change the findings of fact or conclusions of law in the Initial Order, and denied the Petition for Review.

14. Thereafter, Ms. Bogue-Gilmore filed a "Motion for Reconsideration and Relief from Judgments Made Due to Sham Legal Practices" which was received by the Agency on June 18, 2012. In her motion, Ms. Bogue-Gilmore alleged:

(a) That the only court with jurisdiction "that can hear matters of the people" was "a court that functions pursuant to Article III Section 2 of the Federal Constitution";

(b) That neither counsel for the Agency nor Hearing Officer Gaschler produced oaths of office, which “are necessary to prove on the record that MARTHA SNYDER and EDWARD GASHLER [sic] are lawfully functioning before the court”;

(c) That Hearing Officer Gaschler “demonstrated bias in an open court” for allowing counsel for the Agency’s “disrespectful and intimidating comment to the defendant, ‘That’s none of your business’”; and

(d) That oaths of office for Agency board members Gary Price and Cheryl Reynolds were not produced pursuant to Ms. Bogue-Gilmore’s open records request.

Based on these arguments, Ms. Bogue-Gilmore requested that all judgments made against her by the Agency “be void due to the alleged opposing counsel and alleged presiding officers knowing abuse of due processes of law, demonstrating bias in an open court and on record, perjured under oath, failed to have a signed petition, repeatedly failed to lawfully file the unsigned petition and unsigned Consent Orders and hereby states that absent jurisdiction, the agency lacks lawful authority to proceed in this instant matter and therefore, this case must be dismissed, and all judgments rendered be void without prejudice.”

15. On June 22, 2012, the Agency denied Ms. Bogue-Gilmore’s motion for reconsideration. The Agency found that the issues raised by Ms. Bogue-Gilmore in her motion were outside the Agency’s scope of review. The Agency further found that the issues raised by Ms. Bogue-Gilmore “should have been raised at the formal hearing and in the Motion to Review the Initial Order.”

16. Ms. Bogue-Gilmore timely filed a Petition for Judicial Review on July 27, 2012.

### Scope of Review

17. In this case, this Court is a court of review. The issues that this Court may consider are “restricted to those issues raised at the administrative hearing.” *Angle v. Kansas Dept. of Revenue*, 12 Kan. App.2d 756, 764, 758 P.2d 226 (1988). As will be discussed in greater detail below, many of the issues that Ms. Bogue-Gilmore raises in this appeal were not raised at the administrative hearing.

18. Moreover, K.S.A. 77-614(b)(6) require Ms. Bogue-Gilmore to state in her Petition for Judicial Review the “reasons for believing that relief should be granted.” This requirement serves two purposes: “(1) It puts the district court and administrative agency on notice as to what issues will be reviewed, and (2) it assures that only issues that were raised at the administrative hearing will be considered on appeal.” *Kingsley v. Kansas Dept. of Revenue*, 288 Kan. 390, 405, 204 P.3d 562 (2009). This pleading requirement is subject to a strict compliance standard. *Bruch v. Kansas Dept. of Revenue*, 282 Kan. 764, 781, 148 P.3d 538 (2006). As such, this Court only has jurisdiction to review those issues that were set forth in the Petition for Judicial Review. *Bruch*, 282 Kan. at 784-85 (the Petition for Judicial Review is jurisdictional and the failure to comply with the pleading requirements set forth in K.S.A. 77-614(b) precludes a litigant’s statutorily granted right of appeal). As will be discussed in greater detail below, many of the issues that Ms. Bogue-Gilmore raises in her “Appeal Request Brief” and at oral argument were not set forth in her Petition for Judicial Review.

19. Finally, for the most part this Court may only consider evidence that was presented at the administrative hearing. K.S.A. 77-619.

**The “Motion to Dismiss Due to Lack of Jurisdiction”**

20. On September 14, 2012, Ms. Bogue-Gilmore filed a “Motion to Dismiss Due to Lack of Jurisdiction.” This motion was filed after the Agency had filed its Answer to the Petition for Review. In this motion, Ms. Bogue-Gilmore argues:

- (a) Counsel for the Agency never produced her oath;
- (b) Hearing Officer Gaschler never produced his oath of office; and
- (c) No oaths of office are on file with the Kansas Secretary of State for Agency board members Gary Price and Cheryl Reynolds.

Ms. Bogue-Gilmore argues that because these oaths were never produced, the Agency lacked “lawful authority to proceed in this instant matter.”

21. Although there was some discussion at the administrative hearing about whether counsel for the Agency and the Hearing Officer swore an oath when they were admitted to the Kansas Bar, Ms. Bogue-Gilmore did not argue at the administrative hearing that the failure to produce oaths was of legal consequence to the Agency’s ability to prosecute the complaint. Nothing in the Prehearing Order mentions that the Agency’s lawful authority to proceed was at issue, nor did Ms. Bogue-Gilmore argue at the administrative hearing that the failure to produce oaths deprived the Agency of the lawful authority to prosecute the complaint. The Prehearing Order allowed for discovery, but Ms. Bogue-Gilmore did not ask that these oaths be produced in discovery.

22. Had this issue been raised in the Prehearing Order, the Agency would have been on notice to produce the oaths that Ms. Bogue-Gilmore has put in issue on



appeal. Further, in the unlikely event that no oaths had been taken, then remedial action could have been taken at the agency level. Counsel for the Agency could have been disqualified and replaced by another attorney with the Kansas Attorney General's Office. The Hearing Officer could have been replaced with another hearing officer. Board members Gary Price and Cheryl Reynolds could have been recused from the case. Because Ms. Bogue-Gilmore failed to raise this issue at the administrative hearing, she may not argue the issue for the first time on appeal to this Court. *Angle*, 12 Kan. App.2d at 764.

23. Further, Ms. Bogue-Gilmore did not properly set forth this issue in her Petition for Judicial Review. Although Ms. Bogue-Gilmore includes in her Petition for Judicial Review the fact that she requested oaths as required by K.S.A. 77-614(b)(5), she did not contend in her Petition for Judicial Review that the failure to produce oaths deprived the Agency of the lawful authority to prosecute the complaint against her as required by K.S.A. 77-614(b)(6). On this point, in her Petition for Judicial Review Ms. Bogue-Gilmore "formally" requested that counsel for the Agency and Hearing Officer Gaschler "file their certified and timely filed Oath's of Office" with this Court, and she requested that Board members Price and Reynolds likewise file their oaths of office with this Court. Ms. Bogue-Gilmore did not allege in her Petition for Judicial Review that the Agency lacked lawful authority to prosecute the complaint filed against her. As noted above, the Petition for Judicial Review is a jurisdictional pleading. *Bruch*, 282 Kan. at 784-85. Although these issues were raised by Ms. Bogue-Gilmore in the later filed motion to dismiss, because they were not set forth in the Petition for Judicial Review this Court lacks subject matter jurisdiction to consider them.

24. Finally, even if this Court had the ability to consider this issue, Ms. Bogue-Gilmore's argument fails on the merits. There is no legal requirement that counsel for the Agency, the Hearing Officer, or Board members produce oaths of office as a condition precedent for the Agency to take action on the complaint filed against Ms. Bogue-Gilmore. Moreover, since Ms. Bogue-Gilmore did not request during discovery that these oaths be produced, the Agency was under no obligation to produce them at the hearing. The burden of proving that some or all persons involved in prosecuting this complaint lacked lawful authority to act is on Ms. Bogue-Gilmore. In this case, Ms. Bogue-Gilmore produced no evidence or legal authority to establish that the Agency was not lawfully able to prosecute the complaint filed against her.

#### **The "Appeal Request Brief"**

25. In her "Appeal Request Brief", Ms. Bogue-Gilmore first argues that the Agency failed to follow proper procedure by initiating its action against her with "a timely filed and lawful petition"; by submitting a petition that was not signed; and by failing to serve her with the petition.

26. Ms. Bogue-Gilmore failed to include this issue in her Petition for Judicial Review. Although Ms. Bogue-Gilmore makes a vague reference in her Petition for Judicial Review that her "constitutional rights have been violated as follows: (a) due process of law . . .", Ms. Bogue-Gilmore does not mention anything in her Petition for Judicial Review about the Agency's alleged failure to follow proper procedure with respect to the Petition filed with the Agency. Simply alleging due process violations in general is insufficient to comply with the requirements of K.S.A. 77-614(b)(6). *See Bruch*, 282 Kan. 764 at 786 (broad statement in the Petition for Judicial Review

concerning probable cause did not provide the Agency or the district court with any focus on the agency error to be addressed). Accordingly, this Court lacks subject matter jurisdiction to consider any alleged errors the Agency may have committed regarding the petition filed with the Agency.

27. Ms. Bogue-Gilmore likewise failed to raise this issue at the administrative hearing. Of significance, the Prehearing Order indicates gave Ms. Bogue-Gilmore until December 1, 2011 to answer the Agency's Petition. There is nothing in the Prehearing Order to indicate that Ms. Bogue-Gilmore was going to argue procedural defects with the Agency's Petition. Apparently, shortly before the date of the administrative hearing, Ms. Bogue-Gilmore filed several motions to dismiss which were denied by the Hearing Officer because they were not filed by the deadline for dispositive motions provided in the Prehearing Order. The Kansas Administrative Procedure Act (hereafter "KAPA") permits the Hearing Officer to limit the facts and issues at the administrative hearing to those that are contained in the Prehearing Order. K.S.A. 77-523(b). In this case, issues related to the Agency's Petition were not included in the Prehearing Order, and were not considered by the Hearing Officer. This Court is precluded from deciding issues that were not presented at the administrative hearing. *Angle*, 12 Kan. App.2d 756 at 764.

28. Even if the Court had the ability to consider the issues Ms. Bogue-Gilmore raises regarding the Agency's Petition, her arguments fail on the merits. The administrative proceedings were initiated in this case by a Summary Proceeding Order of Revocation issued by the Agency's Complaint Review Committee pursuant to K.S.A. 77-537. Ms. Bogue-Gilmore (who was represented by counsel at the time) requested a hearing. The Agency's Petition was superfluous, and was apparently only filed at the

suggestion of the Hearing Officer in an effort to clarify the issues involved. Because the administrative action had already been commenced by the time the Agency filed its Petition, any procedural errors committed by the Agency with respect to the Petition were of no legal consequence to the Agency's ability to proceed with the administrative action.

29. Ms. Bogue-Gilmore, who is doing the best she can as a *pro se* litigant, simply does not understand KAPA, which is the relevant and controlling statutory framework that governs the actions the Agency took at the administrative level. The federal statutes and local court rules from other out of state jurisdictions cited by Ms. Bogue-Gilmore have no application to this case.

30. Ms. Bogue-Gilmore next argues in her "Appeal request brief" that she was denied a "trial by jury" which she argues, in this context, means a "board hearing" consisting of mental health professional peers." Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Further, Ms. Bogue-Gilmore made no such request at the administrative level. As such, she is not able to raise the issue for the first time on appeal to the district court. *Angle*, 12 Kan. App.2d 756 at 764. Finally, Ms. Bogue-Gilmore's argument fails on the merits. Ms. Bogue-Gilmore, through her then attorney, requested a hearing "before a hearing officer designated pursuant to K.S.A. 77-37,121(5)." Ms. Bogue-Gilmore can hardly complain now that she got the hearing at the administrative level that she requested.

31. Ms. Bogue-Gilmore next argues in her "Appeal request brief" that she was denied her "right to a speedy trial." Ms. Bogue-Gilmore argues that the "fatiguing strategy of dragging out a case for years to manipulate a licensee to surrender their

license is at a minimum, unconstitutional.” Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Further, Ms. Bogue-Gilmore did not raise this issue at the administrative level. No “speedy trial” issue was preserved in the Prehearing Order, nor was such an argument made before the Hearing Officer. To the contrary, at the administrative hearing Ms. Bogue-Gilmore requested continuances in order to secure representation by an attorney. In fact, Ms. Bogue-Gilmore raises as an issue in her Petition for Judicial /Review the claim that the “Hearing Officer did not allow her proper time to obtain counsel.” Ms. Bogue-Gilmore cannot issue raise the issue of improper delay for the first time on appeal to the district court, especially when she took the opposite position before the Hearing Officer at the administrative hearing. *Angle*, 12 Kan. App.2d 756 at 764. Finally, Ms. Bogue-Gilmore’s argument fails on the merits. There is nothing out of the ordinary or unusual about the time required to prosecute this complaint at the administrative level, and certainly no delay that rises to the level of constitutional offense. The Summary Proceeding Order of Revocation which initiated the Agency action was issued on June 13, 2011. The matter proceeded to hearing on April 11, 2012. Eleven months from the date of the initiation of the action to the date of administrative hearing is not an unconstitutionally excessive delay, especially when counsel for Ms. Bogue-Gilmore requested the opportunity to conduct discovery.

32. Ms. Bogue-Gilmore next argues that the Agency refused to allow favorable expert testimony that “was provided to the board” and was alleged to be in possession of the counsel for the Agency. Ms. Bogue-Gilmore did not include this issue

in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Even if the Court was permitted to consider this issue, Ms. Bogue-Gilmore's arguments fail on the merits. First, nothing prohibited Ms. Bogue-Gilmore from listing these witnesses in the Prehearing Order and calling them to testify on her behalf at the administrative hearing. Second, one of these witnesses, Mr. Michael Keller, was listed as a witness in the Prehearing Order, and Ms. Bogue-Gilmore could have called him to testify. Third, the Agency is under no obligation to try Ms. Bogue-Gilmore's case for her. It is the responsibility of Ms. Bogue-Gilmore to present her case to the Hearing Officer, not the Agency's.

33. Ms. Bogue-Gilmore next alleges that she was not granted a continuance in order to secure the assistance of counsel. This allegation is not supported by the Agency Record. The record reflects that Ms. Bogue-Gilmore asked for a continuance in order to obtain counsel. Hearing Officer Gaschler's ruling was as follows:

"The Board's objection is noted for the record. However, I will grant you a continuance if you agree during the term of the continuance you license will be suspended."

Later on, Hearing Officer Gaschler again stated: "You can have your continuance with the suspended license or we can proceed. That's your choice." Ms. Bogue-Gilmore elected to continue with the hearing. Ms. Bogue-Gilmore was provided with the opportunity to continue the proceedings in order to obtain counsel, and she elected not to take that opportunity.

34. Ms. Bogue-Gilmore next argues that Hearing Officer Gaschler failed to provide her "a copy of the missing paperwork as properly requested in writing once Ms.

Bogue-Gilmore realized she was not copied on the petition.” Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Even if the Court was permitted to consider this issue, Ms. Bogue-Gilmore’s arguments fail on the merits. Ms. Bogue-Gilmore does not dispute that the Agency furnished a copy of the Petition to her former counsel. More to the point, however, Ms. Bogue-Gilmore does not identify how she was prejudiced by “not being copied on the petition.” Ms. Bogue-Gilmore does not claim that she was unaware of the substance of the complaint filed against her, or that she was unable to defend against the complaint because she did not get a copy of the Petition. As noted above, this action was initiated by the Agency by a Summary Proceeding Order of Revocation issued by the Agency’s Complaint Review Committee. The Petition was superfluous. Ms. Bogue-Gilmore was adequately notified by the Summary Proceeding Order of Revocation of the nature of the complaint.

35. Ms. Bogue-Gilmore next argues that the Agency produced no witnesses to corroborate the testimony of the complaining witness, S.B. It is not clear whether Ms. Bogue-Gilmore is making a sufficiency of evidence argument, or whether she is attacking the weight and credit that the Hearing Officer gave to S.B.’s testimony.

36. In any event, the KJRA sets the standard of review on questions of fact when reviewing an agency’s actions.

“[The KJRA] allows [the] court to grant relief if the agency’s action is ‘based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the record as a whole.’ K.S.A. 77-621(c)(7). Substantial competent evidence possesses both relevance and substance and provides a substantial basis of fact from which the issues can be reasonably determined. [Citation omitted.]” *Frick Farm Properties, L.P. v. Kansas Dept. of Agriculture*, 289 Kan. 690, 709, 216 P.3d 170 (2009).

This Court is required to view all the evidence in the light most favorable to the prevailing party. *Frick*, 289 Kan. at 710. Because this Court sits as a court of review, this Court does not reweigh competing evidence, or assess the credibility of witnesses, or re-determine questions of fact. *Evenson Trucking Co. v. Aranda*, 280 Kan. 821, 837, 127 P.3d 292 (2006).

37. In this case, the Hearing Officer determined that S.B. was a credible witness, and in his Initial Order articulated reasons why he found S.B. to be credible. As noted above, the standard of review precludes this Court from assessing the credibility of witnesses. That is the function of the Hearing Officer. Moreover, this Court is not permitted to reweigh the evidence. It is for the Hearing Officer to determine the weight and credit to be given the testimony of each witness. Unfortunately for Ms. Bogue-Gilmore, because the Hearing Officer found S.B. to be a credible witness, there is no need for the Agency to produce corroborating witnesses. Further, S.B.'s testimony constitutes substantial competent evidence and provides a basis of fact from which the issues can reasonably be determined, and standing alone constitutes a sufficient evidentiary basis to support the findings of fact made by the Hearing Officer.

38. Ms. Bogue-Gilmore next argues that "[t]he agency used an erroneously falsified document as evidence in an attempt to falsely apply the law." Ms. Bogue-Gilmore is referencing an accounting, prepared by Shelia Floodman, the attorney who represented S.B.'s ex-wife in his divorce, of the payments made to her for services rendered. Essentially, Ms. Bogue-Gilmore's complaint regards the weight and credit that the Hearing Officer gave to this exhibit. As noted above, this Court may not reweigh competing evidence. *Evenson Trucking Co.*, 280 Kan. at 837.



39. Ms. Bogue-Gilmore next argues that the Agency engaged in unlawful procedure and failed to follow prescribed procedure. Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Further, Ms. Bogue-Gilmore did not raise these issues at the administrative hearing. As such, she is not able to raise the issue for the first time on appeal to the district court. *Angle*, 12 Kan. App.2d 756 at 764.

40. Even if the Court was permitted to consider these issues, Ms. Bogue-Gilmore's arguments fail on the merits. Much of Ms. Bogue-Gilmore's argument on this point pertains to her complaints regarding the Agency's Petition, which the Court has addressed in paragraphs 25 thru 29 above. Additionally, Ms. Bogue-Gilmore argues that the Complaint Review Committee meeting notes "have no notations concerning any of the decisions concerning Ms. Bogue-Gilmore's license." The absence of such notations are wholly irrelevant, and prove nothing more than no notes were taken. Ms. Bogue-Gilmore argues that the Complaint Review Committee chair Jean Hogan failed to sign two separate "consent orders." However, as the Agency points out, Ms. Bogue-Gilmore never agreed to enter into a Consent Agreement. Ms. Bogue-Gilmore argues that counsel for the Agency falsely claimed to have "provided a copy of her oath to Ms. Bogue-Gilmore before the hearing." Counsel for the Agency is not required to produce such an oath, Ms. Bogue-Gilmore did not formally request the production of such oath in discovery, nor did Ms. Bogue-Gilmore seek to have counsel for the Agency disqualified. Ms. Bogue-Gilmore argues that the Agency's executive director, Thomas Hawk, agreed in writing to Ms. Bogue-Gilmore's request to have a "full board member hearing."

However, as noted in paragraph 30 above, Ms. Bogue-Gilmore through her then attorney requested a hearing “before a hearing officer designated pursuant to K.S.A. 77-37,121(5).” Ms. Bogue-Gilmore argues that the Agency failed to call witnesses on the witness list who “could have easily explained the truth of the matter.” However, as noted in paragraph 32 above, nothing prevented Ms. Bogue-Gilmore from calling these witnesses herself, and the Agency is under no obligation to try Ms. Bogue-Gilmore’s case for her. Finally, Ms. Bogue-Gilmore complains that neither the Agency nor her former attorneys ever took the deposition of the complaining witness, S.B. However, the Agency is under no obligation to take depositions of any witnesses, and the examination by the Agency of S.B. at the administrative hearing indicates that the Agency did not need to depose S.B. in order to present its case. The former attorneys in question – David Steed and Aaron Good – never entered appearances in the case, and in any event, Ms. Bogue-Gilmore could have taken this deposition herself had she elected to do so. Lastly, Ms. Bogue-Gilmore does not state how her case would have proceeded differently had she taken the deposition of S.B. Depositions are a discovery tool. Ms. Bogue-Gilmore does not argue that she was surprised by the content of S.B.’s hearing testimony, or that S.B. offered any testimony that was not already known to Ms. Bogue-Gilmore prior to the hearing.

41. Ms. Bogue-Gilmore next argues that the Agency was “improperly constituted as a decision making body or subject to disqualification.” The bulk of her argument on this point centers around Ms. Bogue-Gilmore’s complaint that oaths of office were never produced by the various individuals involved in the Agency action. As noted in paragraph 23 above, this issue was not included in Ms. Bogue-Gilmore’s

Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. Further, Ms. Bogue-Gilmore did not timely raise this issue at the administrative level. The issue was not included in the Prehearing Order, nor was any timely dispositive motion filed. Because Ms. Bogue-Gilmore failed to properly raise this issue at the administrative hearing, she may not argue the issue for the first time on appeal to this Court. *Angle*, 12 Kan. App.2d at 764. Even if this Court had the ability to consider this issue, as noted in paragraph 24 above, Ms. Bogue-Gilmore's argument fails on the merits.

42. Ms. Bogue-Gilmore next argues that there was insufficient evidence presented at the administrative hearing to support the violations found by Hearing Officer Gaschler. Ms. Bogue-Gilmore essentially repeats the same arguments that she made at the administrative hearing.

43. As noted above, this Court is a court of review, and its review of Agency actions is limited. This Court must presume that the Agency's findings are valid. *Sunflower Racing Inc. v. Board of Wyandotte Co. Comm'rs*, 256 Kan. 426, 431, 885 P.2d 1233 (1994). This Court may not set aside an Agency's order merely because the Court would have reached a different conclusion had it been the trier of fact. *Id.* Findings of fact made by the Agency may be set aside only if those findings of fact are not supported by substantial competent evidence. *Id.*

44. Ms. Bogue-Gilmore basically wants this Court to substitute its judgment for that of Hearing Officer Gaschler on disputed questions of fact. This Court may not do that. The KJRA limits this Court to simply looking at whether substantial evidence exists in the Agency Record to support the findings of fact made by Hearing Officer Gaschler.

45. The Agency Record reflects that the dates that S.B. was a client of Ms. Bogue-Gilmore were not controverted. Further, the fact that S.B. gave Ms. Bogue-Gilmore \$6,000 in cash in March of 2008, and \$1,000 by check in August of 2008 was not controverted. Ms. Bogue-Gilmore admitted at the administrative hearing that she discussed her personal financial problems with S.B. The dispute between Ms. Bogue-Gilmore and the Agency boils down to whether the money that S.B. gave her was a loan, or whether it was payment for services rendered. There was significant evidence presented at the administrative hearing that the money S.B. gave to Ms. Bogue-Gilmore was a loan and not payment for services, which includes but is not limited to the following:

- (a) S.B. testified that the money he provided was a loan;
- (b) In the memo portion of the \$1,000 check S.B. wrote to Ms. Bogue-Gilmore in August contains the notation that it was a "loan";
- (c) Ms. Bogue-Gilmore declared under penalty of perjury in her bankruptcy filings that the \$7,000 she received from S.B. was a loan;
- (d) Prior to filing for bankruptcy, Ms. Bogue-Gilmore and/or her husband had made several payments to S.B. to repay part of what he had given her; and
- (e) Despite her arguments to the contrary, Ms. Bogue-Gilmore never did produce at the administrative hearing any sort of coherent accounting of what she charged S.B. for services rendered or what she received in payment. The invoices admitted as Respondent's Exhibit 2 are nearly incomprehensible. There are handwritten references to payments received by Ms. Bogue-Gilmore, and it is

impossible for this Court to determine from Exhibit 2 exactly what S.B.'s balance, if any, was due and owing in March or August of 2008.

The Hearing Officers findings of fact and conclusions of law are supported by substantial competent evidence in the Agency Record.

46. Ms. Bogue-Gilmore argues that "approved evidence" was not allowed at the administrative hearing. Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. On the merits, Ms. Bogue-Gilmore was free to offer any exhibit that had been approved in the Prehearing Order. The only exhibits that Ms. Bogue-Gilmore would not have been permitted to introduce were those exhibits that were not identified in the Prehearing Order. The Hearing Office is permitted to limit the parties to the witnesses and exhibits listed in the Prehearing Order. K.S.A. 77-523(b).

47. Ms. Bogue-Gilmore argues that because the Agency failed to show that she was incompetent, there was no way for the Agency to prove the dual relationship violation. Ms. Bogue-Gilmore misreads the regulation that defines a dual relationship. K.A.R. 102-5-1(h) defines a dual relationship as "a professional relationship in which the *objectivity or* competency of the licensee is impaired or compromised" because of certain relationships with a client. Accordingly, a dual relationship can exist between a competent licensee whose objectivity is compromised because of forbidden relationships with a client. The Agency Record contains substantial competent evidence that Ms. Bogue-Gilmore's objectivity was compromised, as evidenced by the fact that Ms. Bogue-Gilmore borrowed money from S.B. in the first place. This decision was driven by Ms.

Bogue-Gilmore's financial distress without regard to how it might impact her professional relationship with S.B.

48. Ms. Bogue-Gilmore finally argues that the Agency's actions were unreasonable, arbitrary or capricious. Ms. Bogue-Gilmore did not include this issue in her Petition for Judicial Review. Consequently, the Court lacks subject matter jurisdiction to consider the issue. *Bruch*, 282 Kan. 264 at 784-85. On the merits, Ms. Bogue-Gilmore cannot show that the Agency's actions were unreasonable, arbitrary or capricious. "An agency's action is 'arbitrary and capricious' if it is unreasonable or 'without foundation in fact.' [Citation omitted.]" *Zinke & Trumbo, Ltd. v. Kansas Corporation Comm'n*, 242 Kan. 470, 475, 749 P.2d 21 (1988). Agency action is "unreasonable" when it is taken without regard to the benefit or harm to all interested parties. *Id.* The first part of Ms. Bogue-Gilmore's argument here is pertains to the Agency's Complaint Review Committee's issuance of the Summary Proceeding Order of Revocation, revoking the Ms. Bogue-Gilmore's license. There is nothing remarkable regarding the way the Agency's Complaint Review Committee handled the complaint against Ms. Bogue-Gilmore. The Agency received a written complaint from S.B., it assigned an investigator to look into the complaint, the Complaint Review Committee reviewed the report of the investigator and the responses from Ms. Bogue-Gilmore and determined to issue the Summary Proceeding Order of Revocation. There is nothing unreasonable, arbitrary or capricious in the manner in which the Complaint Review Committee handled this complaint. The second part of Ms. Bogue-Gilmore's argument pertains to the allegation that she was not competent. The Agency elected not to pursue this claim at the administrative hearing, and no finding of incompetence is included in the

Initial Order. There is nothing unreasonable, arbitrary or capricious about this. The third part of Ms. Bogue-Gilmore's argument is that the Hearing Officer failed to provide her with a continuance and failed to provide her with a copy of the Agency's Petition. These arguments have been addressed in paragraphs 33 and 34 above. The Agency did not act in an unreasonable, arbitrary or capricious manner.

### Conclusion

49. For the reasons stated above, the Court affirms the Agency action. Ms. Bogue-Gilmore's Motion to Dismiss Due to Lack of Jurisdiction is denied. Ms. Bogue-Gilmore's Petition for Judicial Review is dismissed. The Agency's request for an assessment of costs pursuant to K.S.A. 77-620 and 77-622 is denied.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the above findings of fact and conclusions of law be, and they are, hereby made part of the Order, Judgment and Decree of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ms. Bogue-Gilmore's Motion to Dismiss Due to Lack of Jurisdiction is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Agency action is affirmed, and the Petition for Judicial Review is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Agency's requests for costs pursuant to K.S.A. 77-620 and 77-622 is denied.

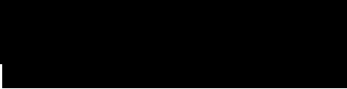
IT IS SO ORDERED.

  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

The Court certifies that a true and correct copy of this Journal Entry was deposited in the United States mail, postage prepaid, on the 4<sup>th</sup> day of December, 2012, addressed to:

Ms. Angela Bogue-Gilmore



Ms. Marty M. Snyder  
Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

A handwritten signature in cursive script, appearing to read "Judge C. J. Davis", written over a horizontal line.